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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,776	11/06/2000	Mitsuaki Oshima	2000 1526	5644

7590- 04/23/2003

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EXAMINER

EE, AMANDA T

ART UNIT	PAPER NUMBER
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2634

DATE MAILED: 04/23/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/705,776

Applicant(s)

OSHIMA, MITSUAKI

Examiner

Amanda T Le

Art Unit

2634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 39-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☒ Certified copies of the priority documents have been received in Application No. 08/037,108.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-8, 10. 6) ☐ Other: \_\_\_\_\_

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 39-43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,256,357. Although the conflicting claims are not identical, they are not patentably distinct from each other. The patented claims fails to disclose that "the first data stream being assigned to a constellation with 4 or less than signal points". Nonetheless, it would have been obvious to one of ordinary skill in the art at the time of the invention to select a specific constellation size for the "first data stream" of the patented system that is feasible for the design requirements.

2. Claims 39-43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 39-49 of copending Application No. 09/705,843. Although the conflicting claims are not identical, they are not patentably distinct from each other because.

The patented claims fails to disclose that "the first data stream being assigned to a constellation with 4 or less than signal points". Nonetheless, it would have been obvious to one

of ordinary skill in the art at the time of the invention to select a specific constellation size for the “first data stream” of the copending claimed system that is feasible for the design requirements.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 39-43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Application No. 09/678,014, 09/677,421, and 09/680,177 in view of Hulyalkar et al.

The copending claims disclose all the subject matters claimed, except for “inverse-fast-Fourier transforming” and “fast-Fourier transforming” and/or “the first data stream being assigned to a constellation having 4 or less signal points”.

Hulyalkar et al discloses a system for transmitting and receiving digital signal using multicarrier modulation (Fig. 4, 5). In the prior art system, IFFT (30) and FFT (90) are used in the transmitting portion and receiving portion, respectively, for implementing a MCM transmission system. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of the copending claims using Hulyalkar et al’s teachings to obtain a MCM transmission system having the advantages suggested by Hulyalkar et al (see col. 2, lines 60-64).

Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to select a specific constellation size for the “first data stream” of the copending claimed system that is feasible for the design requirements.

With respect to the omission of the limitations of "ECC encoding and decoding", it would have been obvious to one of ordinary skill in the art at the time of the invention to omit a particular element whose function is not needed in for a specific design.

This is a provisional obviousness-type double patenting rejection.

***Allowable Subject Matter***

4. Claims 39-43 would be allowable if rewritten or amended to overcome the double patenting rejection(s), set forth in this Office action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Amanda Le** whose telephone number is **(703) 305-4769**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Stephen Chin**, can be reached at (703) 305-4714.

**Any response to this action should be mailed to:**

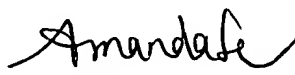
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

  
**AMANDA T. LE**  
**PRIMARY EXAMINER**